

# KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63<sup>RD</sup> FLOOR  
NEW YORK, NEW YORK 10118  
TEL (212) 763-0883 | FAX (212) 564-0883  
WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0889

DIRECT EMAIL shecker@kaplanhecker.com

September 1, 2021

**BY ECF**

The Honorable Margo K. Brodie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19  
Civ. 660 (MKB)*

Dear Chief Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's order dated August 27, 2021.

Following last week's conference, we reiterated to the government and mediation team our concerns regarding the upcoming transfer of inmates from the MCC to the MDC. Our concerns were not new, but were heightened by the possibility that the MDC population would increase without a concomitant increase in resources at a facility that has too often failed to provide the resources (especially staffing) needed to prevent disruptions to legal access. The list of concerns we provided to the government included:

- Hiring sufficient staff to ensure that all legal calls and court conferences take place as scheduled;
- Hiring sufficient staff to ensure that in-person legal visits happen in a timely manner;
- Providing VTC access in every unit, including East SHU and other East Side units;
- Ensuring privacy for legal calls and VTCs for inmates housed in East Side dormitory units;
- Ensuring that every unit has at least two functioning discovery computers;
- Ensuring that inmates have regular law library access, especially given recent curtailments due to staffing shortages and lockdowns;
- Installing or ensuring the functioning of Federal Defender phones on all East Side units;
- Making arrangement for uniquely situated inmates to ensure access to counsel; and

## KAPLAN HECKER &amp; FINK LLP

2

- Providing information on how to request COVID-19 vaccines.

We appreciate government counsel's commitment to discussing these issues through the mediation process, but remain concerned about the MDC's lack of specific plans, coupled with the uncertainty surrounding the timing of the impending transfer.

The issue of on-unit VTC equipment is indicative of how long it can take to implement changes at the MDC. The BOP has long promised that VTC equipment would be installed on every unit at the MDC so that, even in the event of quarantines or other types of lockdowns, this form of remote access would remain available. At the end of July, the government told the Court that "MDC now has, at least, one operable VTC unit on every single unit" such that "even when a unit is on quarantine, there will be a VTC on the unit, so that will -- that will alleviate any of the issues moving forward about VTCs, the quarantine units no longer having VTC access." Tr. of July 30, 2021 Conf. at 6-7. We expressed our concerns with the accuracy of that representation before last week's conference, *see* Doc. No. 212 at 2, and the government today confirmed that "[c]urrently, the East SHU does not have its own VTC unit," Doc. No. 217 at 4.

While we are hopeful that the necessary VTC equipment will soon be installed, both on the East SHU and on other units, we are far less optimistic that the MDC will address its severe staffing shortage. Indeed, several hundred inmates have been moved from the MCC to the MDC over the past three months, and during that time longstanding staffing problems seem to have only grown worse. Based on reports from MDC staff, we have learned of acute shortages that are affecting security, recreation time, law library access, and time out of cell for telephone calls, emails, and discovery review. This is consistent with the Federal Defenders' experience over the last several weeks: COs have rescheduled legal calls because, in their own words, there is insufficient staff to place them. And while the government highlights that even with the transfer of inmates from the MCC, the MDC will be under capacity, *see* Doc. No. 217 at 1 n.1, that means little if the MDC continues to be staffed as if it were a much smaller facility.

We are committed to engaging with the government on all these issues and appreciate the mediator's involvement, particularly when it comes to longstanding and seemingly intractable issues like staffing. We thank the Court for its continued attention to this important matter.

Respectfully submitted,

/s/ Sean Hecker  
Sean Hecker

cc: Counsel of Record (by ECF)  
Hon. Loretta Lynch, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)  
Roberto Finzi, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)  
Norhan Bassiouny, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)  
Jeffrey Oestericher, U.S. Attorney's Office (S.D.N.Y.) (by e-mail)